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Single Bench

BEFORE THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

S.A.NO...433...OF 2004(SB).

APPELLANT
PLAINTIFF

- : 1) Balakram, aged about 62 years,
S/o. Dhundha Uraun, R/o. vill.
Golabuda, Tah. Dharamjaigarh,
Distt. Raigarh, (Chhattisgarh).

V E R S U S

RESPONDENTS
DEFENDANTS

- : 1) Smt. Matiya Bai, aged about 47 years,
D/o. Anju Uraun.
- 2) Smt. Munni Bai, aged about 50 years,
D/o. Anju Uraun.
- 3) Smt. Remni, aged about 42 years,
D/o. Anju Uraun.
- All Agriculturist by profession
R/o. village Lipti, Tahsil Dharam-
Jaygarh, Distt. Raigarh (C.G.).
- 4) State of Chhattisgarh,
through : Collector, Raigarh (C.G.).
- 5) Chaitram, aged about 57 years, S/o
Dhundha Uraun.
- 6) A. Smt. Gurubari, aged about 72 years,
D/o. Dhundha.
- B. Smt. Mati Bai, aged about 70 years,
D/o. Dhundha
- C. Smt. Foolo Bai, aged about 62 years,
D/o. Dhundha.
- D. Smt. Bubiya Bai, aged about 59 years,
D/o. Dhundha.
- E. Smt. Deo Bai, aged about 57 years,
D/o. Dhundha.
- F. Smt. Matia Bai, aged about 54 years,
D/o. Dhundha.

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Presented by Smt. Neeraj Jaiswal
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clerk to C.A.

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R/o. village Golabuda, Tahsil
Dharamjaygarh, Distt. Raigarh
(Chhattisgarh).

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF
CIVIL PROCEDURE, 1908.

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Second Appeal No.433/2004

Balak Ram

Vs.

Smt. Matiya Bai and others

J U D G M E N T

Post for 03.01.2005

Sd/-

Sunil Kumar Sinha
Judge

4/1/05

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

Second Appeal No.433/2004

Balak Ram

Vs.

Smt. Matiya Bai and others

Shri B.R. Ghosh and Smt.Meera Jaiswal, counsel for the
appellant.

JUDGMENT
(03 .01.2005)

Sunil Kumar Sinha, J,

Heard on the question of admission.

(2) One of the plaintiffs has filed this appeal u/s 100 of the Code of Civil Procedure against the impugned judgment and decree dated 15.5.2004 passed in Civil Appeal No.3-A/2003 by the IVth Additional District Judge (F.T.C), Raigarh (C.G), arising out of judgment and decree dated 31.10.2002 passed in Civil Suit No.87-A/1998 by the Civil Judge, Class-I, Dharamjaigarh, Distt. Raigarh (C.G).

(3) The brief facts of the case are as under :

The plaintiffs filed a suit for declaration of title and confirmation of possession in relation to the agricultural lands (10 plots admeasuring 10.797 hectares) described in Schedule-A of the plaint. The plaint allegations are that late Kole Uraon was having his properties in village *Lipti* and village *Golabuda*. He had two sons namely Dhundha Uraon and Anju Uraon.

The lands of village Lipti was partitioned between the two brothers in which the half share allotted to Anju Uraon was given under a will to defendant no.1 and the remaining half share was in possession of his brother namely Dhundha. There is no dispute about the property of village Lipti. Further allegations are that since late Anju Uraon was having no male issue, he has adopted the plaintiff no.1 (Chaitram) as his son who was looking after his maintenance. Dhundha died on 12.12.1970 and Anju died on 17.5.1985. It is the specific pleading of the plaintiffs that the entire land of village Golabuda shown in Schedule-A of the Plaint was received in partition by Dhundha who remained in exclusive possession of the same. After the death of Dhundha on 12.12.1970, the plaintiffs also came in exclusive possession as his successors and the defendants or late Anju were having no right or interest in the said property. They also pleaded that since the plaintiffs and their predecessors were having exclusive possession over the suit land from 30-40 years back, they have perfected their title by way of Adverse Possession. They further pleaded vide para 9 of the plaint that on 15.5.1984 a Panchayat was held in village Lipti and in the said Panchayat, a **Sahmati Patra** was executed by Anju. According to this document, he had agreed for deletion of his name from the revenue records of the suit lands, that is from the lands of village Golabuda, however, due to mistake of the document writer, the same was denoted as a gift deed which is not correct. Therefore, on the basis of this document also whatever

right was acquired by late Anju in the properties of Schedule-A of the plaint, that was surrendered in favour of the plaintiffs, therefore, the plaintiffs are the absolute owners of the suit property. The cause of action arose when after the death of Anju, a mutation was recorded in the names of defendants also on 05.7.1985. The plaintiffs claimed that they are the absolute owners of the property on the above grounds, therefore, a decree to the said effect be passed in their favour.

(4) The defendants filed their written statement denying the contentions of the plaintiffs. It was pleaded by them that no such adoption had taken place in the family. Neither there was any such partition in the family in which the lands of Schedule-A were allotted to the share of late Shri Dhundha, nor they were having the absolute possession on the suit lands so as to perfect their title by way of adverse possession. They also denied the factum of village panchayat and also the factum of execution of any such document in the said Panchayat which can be said to be the *Sahamati Patra* or a document of surrender.

(5) The learned trial Court framed various issues in this case and after recording evidence of the parties dismissed the suit holding that the plaintiffs could not prove partition as has been alleged by them. They have also not proved that they are in exclusive possession of the suit properties and have perfected their title by way of adverse possession. The factum of adoption was also held to be not proved by the plaintiffs and

the factum of surrender of right by Anju in favour of Dhundha was also not established.

(6) Against the aforesaid judgment and decree passed by the trial Court, the plaintiffs filed an appeal before the lower appellate Court. The lower appellate Court dismissed their appeal and confirmed the judgment and decree passed by the trial Court. It is against the said judgment and decree, one of the plaintiffs has filed this second appeal having lost in both the courts.

(7) Learned counsel for the appellant submits that the courts below erred in law in holding that the plaintiffs could not establish the factum of partition in the family in which the lands of Schedule-A of the plaint were allotted to their share. He further submits that a valid adoption as well as continuous possession resulting into perfection of title by way of adverse possession has also been established. He also submits that the execution of a document in relation to surrender has also been established and the courts below erred in law in holding that the same has not been proved to create any absolute right or interest in favour of the plaintiffs.

(8) I have heard learned counsel at length and have also perused the impugned judgment and decree and the records of the two Courts below.

(9) The first plea in relation to adoption is based upon no evidence on record. Para 8 of the Judgment of the trial Court deals with this matter. A simple statement has come from P.W.1 Balakram. There is no other evidence on record in this regard which may suggest that in fact, the deceased has adopted the plaintiff no.1 as his son. Neither the plea of physical act of giving and taking is taken nor the same has been tried to be established in accordance with law. In the above facts and circumstances, the adoption as has been alleged by the plaintiffs, has not been established and the courts below committed no error of law in holding the same as not proved.

(10) The plea of partition has also been considered under reply to issue no.1 and except a bald statement of the plaintiff, there is no other reasonable evidence on record to hold that there was a partition in the family and in the said partition, the lands of Schedule-A of the plaint were allotted to the share of late Dhundha excluding the right and interest of Anju in it.

(11) Now coming to the arguments about perfection of title by adverse possession, this Court can only say that the law is well settled on the point. Between co-owners or co-sharers there could be no adverse possession unless there has been a denial of title and an ouster to the knowledge of the other. No comprehensive formula can be framed to test whether the possession of a co-owner in a particular case is adverse to the

other. The denial of title and the animus to hold adversely should, however, be clear and evidenced by unequivocal conduct. Please see the decision of High Court of M.P. reported in 1992 MPLJ Pg.79 (Beharilal, s/o Ramlal -Vs- Jagannath, s/o Ramlal). Dealing on the same point, His Lordship has further reiterated vide para 14 of the judgment relying on the decision of the Calcutta High Court reported in AIR 1930 Calcutta 466 (Abdul Wahed -Vs- Mohan Bashi Saha and others) that "the knowledge of exclusion from joint family property or the ouster may be proved directly or inferentially". The proposition laid down in the above judgment referred to in 1992 MPLJ Pg. 79 is quoted as under :

"Adverse possession that would extinguish a cosharer's title must be adverse to the proved knowledge of the cosharer ousted, however, notorious such possession may be. Exclusion or ouster involves not merely the act of the person ousting but the state of the mind of the person ousted. Knowledge on the part of the latter, therefore, is essential. Such knowledge may be proved directly or inferentially. On the principle of constructive notice, it may also be proved that the cosharer against whom possession was exercised had sufficient notice of facts or sufficient information which would put a reasonable person on enquiry and on receipt of which a reasonably attentive person could not but realize that he was ousted. It is not the law that a non-diligent cosharer is bound to suffer. It is essential to find knowledge of ouster on his part."

In the present case, no such plea has been taken by the plaintiffs nor the factum of adverse possession has been proved in accordance with the principles, referred to above.

(12) The question in relation to surrender of property by Anju is also not established as the two Courts below have

concurrently found that the plaintiffs have failed to prove the same in accordance with law.

Besides the above, this Court is of the opinion that all the questions raised by the appellant at this stage are the questions of facts and the same have been dealt with by the two courts below and concurrent findings have been recorded about them. This Court has also gone through the evidence adduced by the parties and in the opinion of this Court no perversity arises on which an interference may be required in the second appellate stage, therefore, the concurrent findings of the facts in relation to the above issues are upheld.

(13) At last, learned counsel for the appellant also argued that since The Hindu Succession Act 1956 is not applicable in this case, the defendants being the daughters will not inherit the properties of their father, therefore, these properties would devolve on the male members alone being the only successors in the family. In fact, the argument is based upon the principle that the daughters will only have a life interest in the property, and they cannot be said to be absolute owners of it. In light of this argument, the plaint is to be seen firstly. The plaintiffs have not taken such a plea in their plaint, neither they have raised any such ground on the basis of daughters' right in *Adivasis* nor any law or custom has been pleaded to show as to how the devolution of property will take place in their caste. The pleadings of the plaint as well as the reliefs claimed

thereof, do not permit this court to examine the matter in this line. The main relief of the plaint is quoted as under:

"(1) धोषित किया जावे कि ग्राम गोलाबुड़ा ...
पहल नं. 10 में स्थित भूमि कुल खं. नं. - 10 कुल
शकबा 18.797 हेक्टेयर के वादीगण ही अनन्य
रूप से भूमि स्वामी हैं एवं प्रतिवादीगण क्र. 1
अगामत 4 का उस भूमि पर कोई स्वत्वाधिकार
नहीं है."

Even on the basis of pleas raised by the plaintiffs, the above relief cannot be granted in the life time of the defendants as the plaintiffs cannot be declared to be the absolute owners of the properties excluding the rights or interests (which according the plaintiffs are the life interests) vested in it. Hence, this ground taken by the appellant in this appeal also fails.

(14) After commencement of the amendment in the Code of Civil Procedure in the year 1976, this Court is having limited jurisdiction to entertain the second appeal, which can only be entertained if any substantial question of law is involved in the matter. Please refer to the decision of Supreme Court reported in (2000) 3 SCC 708 (Roop Singh (Dead) through LRs -Vs- Ram Singh (Dead) through LRs) in which it has been laid down that under Section 100 of the Code of Civil Procedure, the jurisdiction of the Court to entertain a second appeal is confined only to such appeals which involve a substantial question of law and it does not confer any jurisdiction on the

High Court to interfere with the pure questions of fact while exercising its jurisdiction u/s 100 C.P.C. It has been said by the Apex Court that the existence of substantial question of law is the *sine qua non* for the exercise of jurisdiction under the amended provisions of Section 100 of the Code of Civil Procedure and unless such questions are involved, the appeals are not to be entertained (Please see *Thiagarajan and others Vs. Sri Venugopalaswamy B. Koil and others* reported in (2004) 5 SCC 762.

(15) In the opinion of this Court, no substantial questions of law are involved for consideration. Hence the appeal fails and is dismissed at the admission stage itself without any orders as to the costs.

Sd/-
Sunil Kumar Sinha
Judge

03.01.2005

Rao